

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 205X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–
IN SUTTER COUNTY, CA

Decided: February 23, 2005

By decision and notice of interim trail use or abandonment (NITU) served on August 6, 2004, the Board, under U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Union Pacific Railroad Company (UP) of a 3.39-mile line of railroad known as the Yuba City Industrial Lead, extending from milepost 136.38 near Marysville, CA, to milepost 139.77 near Colusa Junction, CA, in Sutter County, CA. The exemption was subject to public use, two environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the City of Yuba City (City) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. The negotiating period expired on February 2, 2005.¹

By revised facsimile received on February 17, 2005, the City requests a 180-day extension until August 1, 2005. In a letter filed on February 14, 2005, and revised by facsimile received on February 17, 2005, UP states that it is willing to continue negotiating with the City concerning acquisition of the subject property for trail use and supports the City's request to extend the trail use negotiating period for an additional 180 days until August 1, 2005.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended until August 1, 2005.

¹ The public use condition, which is limited by statute to 180 days, is scheduled to expire on March 4, 2005, and may not be extended. The two environmental conditions imposed remain in effect.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to August 1, 2005.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceeding.

Vernon A. Williams
Secretary